

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

KOCH FOODS OF ALABAMA, LLC,	)	
an Alabama limited liability company,	)	Case No. 07-cv-522-MHT
	)	
Plaintiff and Counterclaim-defendant,	)	
	)	Honorable Myron H. Thompson
v.	)	
	)	Honorable Terry F. Moorer
GENERAL ELECTRIC CAPITAL	)	
CORPORATION, a Delaware corporation,	)	
	)	
Defendant and Counterclaim-plaintiff.	)	

## **KOCH FOODS' OBJECTIONS TO GECC'S DEPOSITION DESIGNATIONS**

Plaintiff and Counterclaim-Defendant, Koch Foods of Alabama, LLC (“Koch”), through its undersigned counsel, pursuant to this Court’s Uniform Scheduling Order dated July 17, 2007, submits the following objections to the Deposition Designations submitted by Defendant and Counterclaim-Plaintiff General Electric Capital Corporation (“GECC”) (Doc. No. 84):

Mark Kaminsky (portions of the transcript to which the following objections apply are attached as **Exhibit A**)

pp. 20:11-21:14. Objection: irrelevant.

p. 44:12-16. Objection: lack of foundation; improper form.

p. 56:11-14. Objection: lack of foundation; improper form.

p. 67:13-19. Objection: lack of foundation; improper form.

p. 69:9-12, 14-21. Objection: lack of foundation; improper form.

p. 85:8-11. Objection: lack of foundation; improper form.

p. 88:23. Objection: lack of foundation; improper form.

p. 91:8-9. Objection: lack of foundation; improper form.

p. 96:1-2. Objection: lack of foundation; improper form.

p. 125:8-11. Objection: calls for a legal conclusion.

p. 136:9-13. Objection: lack of foundation; improper form.

p. 144:5-12. Objection: lack of foundation; improper form.

p. 145:13-23. Objection: irrelevant, lack of foundation; improper form.

David Bromley (portions of the transcript to which the following objections apply are attached as **Exhibit B**)

p. 41:4-5. Objection: lack of foundation.

p. 43:3-16. Objection: lack of foundation; improper form.

p. 44:12-16. Objection: lack of foundation.

p. 46:1-20. Objection: lack of foundation; improper form.

Koch reserves its right to amend its objections in the interest of justice and for good cause shown to the Court.

Dated: March 31, 2008

Respectfully submitted,

/s/ Zhiyuan Xu

Zhiyuan Xu

OF COUNSEL

Thomas G. Mancuso

Constance C. Walker

Haskell Slaughter Young & Gallion, LLC

305 South Lawrence Street

Montgomery, Alabama 36104

Telephone: 334-265-8573

Facsimile: 334-264-7945

Email: [tgm@hsy.com](mailto:tgm@hsy.com)

OF COUNSEL

Eugene J. Geekie, Jr.

Jonathan P. Friedland

Zhiyuan "Mike" Xu

Schiff Hardin LLP

6600 Sears Tower

Chicago, Illinois 60606

(312) 258-5500

(312) 258-5600 (Fax)

[egeekie@schiffhardin.com](mailto:egeekie@schiffhardin.com)

Counsel for Koch Foods of Alabama, LLC

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that copies of the foregoing were caused to be served upon counsel of record addressed as follows by the ECF system on this 31st day March, 2008.

Alexander Terras  
Timothy Scott Harris  
Reed Smith Sachnoff & Weaver  
10 South Wacker Drive  
Chicago, IL 60606  
312-207-1000  
Fax: 312-207-6400  
[tharris@reedsmith.com](mailto:tharris@reedsmith.com)  
aterras@reedsmith.com

Rusha Christina Smith  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104  
205-521-8010  
Fax: 205-488-6010  
Email: rsmith@bradleyarant.com

\_\_\_\_\_  
/s/ Zhiyuan Xu  
Zhiyuan Xu

# Exhibit A

Mark Kaminsky

October 19, 2007

Page 18

1 Q What does the first one do, JCG  
2 Industries?  
3 A It holds properties.  
4 Q Real estate?  
5 A Yes, real estate.  
6 Q This is JCG Industries?  
7 A That's correct.  
8 Q Does it do anything besides hold real  
9 estate?  
10 A No. That's its function.  
11 Q And what is your position with that entity  
12 or positions?  
13 A Right. Chief financial officer, secretary  
14 and treasurer.  
15 Q Would you hold those same positions for  
16 Koch Freezers and for JCG Properties as well?  
17 A Yes.  
18 Q And what is the business of Koch Freezers?  
19 A Koch Freezers is again a real estate  
20 company. It owns property in Morton, Mississippi.  
21 Q Morton?  
22 A Morton, M-o-r-t-o-n.  
23 Q Is that near Jackson?  
24 A Not far.

Page 19

1 Q Does it do anything else besides hold  
2 property, real estate?  
3 A It is a pass-through entity that performs  
4 freezer services for Koch Foods under a contract.  
5 Q And when you say a pass-through entity,  
6 what do you mean by that?  
7 A It's captive. All its activities are for  
8 Koch Foods.  
9 Q Tell me about JCG Properties, what does it  
10 do?  
11 A It also holds real estate. It also does  
12 some real estate development.  
13 Q Where at?  
14 A The properties are owned in the  
15 Chicagoland area, and the real estate development is  
16 in Tennessee.  
17 Q Where in Tennessee?  
18 A Chattanooga.  
19 Q Are these real estate holdings connected  
20 with Koch Foods in any way? Strike that.  
21 Are these real estate holdings connected  
22 with the poultry business?  
23 A Within which entity?  
24 Q The last one, JCG Properties.

Page 20

1 A Some of them are, yes.  
2 Q And some of them are not?  
3 A Correct.  
4 Q Okay. Now, let's talk about the Koch  
5 Foods, Inc. side. Are you the CFO, secretary and  
6 treasurer of Koch Foods, Inc.?  
7 A Yes.  
8 Q Any other positions that you hold with  
9 Koch Foods, Inc.?  
10 A No.  
11 Q Now, explain to me if you would, as you  
12 put it, the family of organizations of Koch Foods,  
13 Inc.  
14 A Koch Foods has many facilities or  
15 processing plants or complexes throughout the United  
16 States. And each one has its own legal entity.  
17 Q Understood.  
18 A And each one of those funnels up  
19 ultimately to the holding company.  
20 Q And when you say funnel up, what do you  
21 mean by that?  
22 A Essentially the holding company -- in one  
23 way or another everything eventually winds up so  
24 that it's ultimately owned by Koch Foods,

Page 21

1 Incorporated.  
2 Q And Koch Foods is the company toward which  
3 all these are funneled up?  
4 A Correct, except for 1 percent of some of  
5 the entities that are held individually by Joseph  
6 Grendys.  
7 Q Does Joseph Grendys hold individually any  
8 portion of Koch Foods of Alabama, LLC?  
9 A Koch Foods of Alabama, LLC?  
10 Q Yes.  
11 A No.  
12 Q Who owns that? Is that 100 percent owned  
13 by Koch Foods, Inc.?  
14 A Yes.  
15 Q When were you hired by Koch Foods, Inc.,  
16 what year?  
17 A 1990.  
18 Q Have you been continuously employed there  
19 since that time?  
20 A Yes.  
21 Q When you were hired in 1990, what was your  
22 position?  
23 A I started as -- we were a much smaller  
24 company. I started as a controller.

6 (Pages 18 to 21)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524

(800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 42

1 Mr. Geekie ever made that demand?  
 2 A No.  
 3 Q Do you know when the first demand was  
 4 made?  
 5 A I do not recall.  
 6 Q Was it in 2006?  
 7 A No.  
 8 Q Was it only in 2007?  
 9 A Yes.  
 10 Q When did Koch begin using the deboner  
 11 line?  
 12 A June of 2006.  
 13 Q So your testimony is that Koch Foods began  
 14 using the deboner line before it demanded that GE  
 15 remove it?  
 16 A Yes.  
 17 Q And why was that? Strike that.  
 18 Why did they start using the deboner?  
 19 A As is typical when you buy a company out  
 20 of bankruptcy, you have to settle certain matters  
 21 that are part of the process. We were aware there  
 22 was a lease between Sylvest and GE. And we  
 23 attempted to make payment to GE to settle any  
 24 possible conflicts regarding the property, the

Page 43

1 equipment, with them.  
 2 Q Okay. And when were those efforts made to  
 3 pay GE?  
 4 A June of 2006.  
 5 Q And what were those efforts, did you send  
 6 checks, did you call, what did you do?  
 7 A I had conversations with a representative  
 8 of GE.  
 9 Q And who is that?  
 10 A I don't recall his specific name, and it  
 11 may have been a gentleman Mike or Michael. I  
 12 believe first I was contacted by an attorney, and I  
 13 told him that I was attempting to contact the  
 14 business folks within GE and work this matter out.  
 15 Q And you don't remember that gentleman's  
 16 name other than his first name may have been  
 17 Michael?  
 18 A No.  
 19 Q His last name may have been Michael?  
 20 A No, I believe his first name was Michael,  
 21 but again, I don't recall his name.  
 22 Q Okay. And tell me the substance of those  
 23 conversations.  
 24 A I basically wanted to come to some

Page 44

1 mutually agreeable conclusion to the potential  
 2 conflict that could arise in terms of this  
 3 equipment.  
 4 Q And did you make an offer of what that  
 5 might be?  
 6 A At first we probably outlined what our  
 7 intentions were towards the equipment, specifically  
 8 the Ossid equipment.  
 9 Q Okay.  
 10 A The vast majority of it was never even  
 11 uncartoned.  
 12 Q And what was Koch Foods' intentions with  
 13 respect to that equipment?  
 14 A We told them to come and get it.  
 15 Q And what happened, did they do that?  
 16 A They came and got it.  
 17 Q What was Koch Foods' intention with  
 18 respect to the deboner line? And this is in June of  
 19 2006.  
 20 A Yes, absolutely. Being that it was  
 21 attached to the facility, not very easy to remove or  
 22 take out, but also understanding that to move the  
 23 process forward, some sort of offer to GE would be  
 24 appropriate, but also having to go through the

Page 45

1 process of what we actually wanted or needed out of  
 2 that deboning equipment and what we didn't want, and  
 3 that's basically what I communicated to the  
 4 gentleman at GE.  
 5 I said some of this stuff is useless to  
 6 us. We'd like to go through the list. We'd like to  
 7 indicate the stuff that we truly don't want. If you  
 8 guys want it because we don't have a use for it,  
 9 you're more than welcome to it, and we'd like to pay  
 10 you some amount of money as an accommodation.  
 11 Q Well, for use of the stuff you did want?  
 12 A Not for use --  
 13 Q For ownership?  
 14 A For settlement.  
 15 Q My question to you is what was it that you  
 16 were intending to do, to own it, to lease it?  
 17 A Well, we felt we already owned it, but we  
 18 also understood that in these matters there's  
 19 usually contention. And if we could make a payment  
 20 to settle the matter, that would probably be in the  
 21 best interest of both parties.  
 22 Q And was an offer made of a precise dollar  
 23 amount?  
 24 A Yes.

12 (Pages 42 to 45)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 54

1 A I don't recall, no.  
 2 Q If you look at paragraph 13 of  
 3 Exhibit B --  
 4 MR. GEEKIE: Tim, the letter you just  
 5 showed Mr. Kaminsky as a deposition exhibit, is  
 6 that Exhibit U or V?  
 7 MR. HARRIS: U.  
 8 Q Paragraph 13 of Exhibit B, it says, "GE  
 9 Capital demanded and continues to demand that Koch  
 10 Foods pay Sylvest Farms' rental charges for the  
 11 equipment." Do you see that?  
 12 A Yes.  
 13 Q Were those demands made on you?  
 14 A No.  
 15 Q Were they made on your attorneys?  
 16 A I'm not aware. If they made them, I don't  
 17 know in what timeframe they were made or if they  
 18 were made at all. I just don't know.  
 19 Q Okay. But you approved of this complaint,  
 20 right?  
 21 A Yes.  
 22 Q But you're not sure of that paragraph?  
 23 A What I am saying is I don't know who  
 24 specifically -- I'm sure GE demanded money. I just

Page 55

1 don't know who they made that demand of. It was not  
 2 of me. They never mentioned to me or demanded money  
 3 from me.  
 4 Q But you believe that it was to someone  
 5 else then?  
 6 A Yes.  
 7 Q Now, in Count I, as I read Count I of this  
 8 complaint, Koch Foods is asserting ownership of all  
 9 of the equipment including all of the deboner line,  
 10 is that correct?  
 11 A Less the Ossid equipment, yes.  
 12 Q Understood. Is that claim of ownership  
 13 still in existence today?  
 14 A Yes.  
 15 Q Then, again, why is GE Capital being --  
 16 strike that.  
 17 Why is Koch Foods demanding that GE  
 18 Capital remove the equipment?  
 19 A From my perspective, while we feel we own  
 20 the property, we also feel that there is the  
 21 potential for conflict. We attempted to resolve the  
 22 conflict by making an offer of settlement. When  
 23 that was not accepted, another potential way to  
 24 settle the conflict would be for GE to pick up the

Page 56

1 property.  
 2 Q This is after it had been used by Koch  
 3 Foods?  
 4 A That is correct.  
 5 Q And the initial demand that GE come and  
 6 pick up the deboner line was made when?  
 7 A Would have been in the April/May  
 8 timeframe. I don't know the exact date.  
 9 Q And that's of 2007?  
 10 A Yes.  
 11 Q And that's because Koch Foods had already  
 12 found replacement equipment, correct?  
 13 A We had replaced the deboning equipment,  
 14 yes.  
 15 Q Now, there's a claim in this complaint  
 16 also for storage, correct?  
 17 A Yes.  
 18 Q Does that storage claim also go to the  
 19 deboning line?  
 20 A Yes.  
 21 Q So then the position of Koch is that while  
 22 it was using the deboning line to its benefit, GE  
 23 Capital is obligated to pay for storage fees?  
 24 A Within the context of our conflict, yes.

Page 57

1 Q Did Koch ever request of GE storage fees  
 2 prior to filing the complaint?  
 3 A No.  
 4 Q And why is that?  
 5 A We had attempted other ways of resolving  
 6 the conflict. In my mind you can't have it both  
 7 ways. You can't tell me I don't own the equipment  
 8 and leave it there and not pay storage. Conversely  
 9 if I own the equipment and I'm willing to settle the  
 10 matter for a dollar amount, one way or another we  
 11 were hoping to come to a resolution of the problem.  
 12 Q But you never did, correct?  
 13 A No.  
 14 Q Did Koch Foods receive any benefit as a  
 15 result of the presence of the equipment at the plant  
 16 facility?  
 17 MR. GEEKIE: Objection, vague and  
 18 ambiguous.  
 19 A What do you mean in terms of benefit?  
 20 BY MR. HARRIS:  
 21 Q Economic benefit?  
 22 A Did we receive economic benefit? We used  
 23 the equipment.  
 24 Q To the benefit, to the economic benefit of

15 (Pages 54 to 57)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6



Mark Kaminsky

October 19, 2007

Page 66

1 A No.  
 2 Q Where?  
 3 A Albertville, I believe.  
 4 Q Was any damage caused to the plant by its  
 5 removal?  
 6 A Yes.  
 7 Q Tell me about that.  
 8 A The equipment is moored to the floor with  
 9 bolts. The flooring -- or those bolts would have  
 10 had to have been removed, the floor repaired.  
 11 Q Well, was it?  
 12 A Yes.  
 13 Q Okay. Because, I mean, this has occurred,  
 14 right? It has been removed?  
 15 A Yes.  
 16 Q Okay. So the mooring was damaged -- I'm  
 17 sorry, the mooring was removed and the floor was  
 18 damaged?  
 19 A Correct.  
 20 Q And how was the floor damaged?  
 21 A The bolts are secured to the floor, so  
 22 holes are made in the floor to hold the bolts.  
 23 Those bolts are then removed, and the floor needs to  
 24 be returned to a solid surface without the hole.

Page 67

1 Q And has that been done?  
 2 A Yes.  
 3 Q And how much did that cost?  
 4 A I don't know the specific dollar amount.  
 5 Q Who would know that?  
 6 A Wayne Jones.  
 7 Q And was it repaired by the same entity  
 8 that removed the deboning line or do you know?  
 9 A It was repaired by the same entity that  
 10 removed the deboning line.  
 11 Q Were any walls removed?  
 12 A No.  
 13 Q What is the basis for the statement there  
 14 that Sylvest intended for the equipment to become  
 15 fixtures?  
 16 MR. GEEKIE: Are you referring to  
 17 paragraph 17?  
 18 MR. HARRIS: I am.  
 19 A They affixed it to the facility.  
 20 BY MR. HARRIS:  
 21 Q Did you have any conversations with anyone  
 22 at Sylvest regarding whether they intended it to  
 23 become fixtures?  
 24 A My visual observation was that it was, not

Page 68

1 my conversation with Sylvest.  
 2 Q Understood. My question is did you  
 3 have --  
 4 A No.  
 5 Q -- any conversations -- okay.  
 6 Did anyone at Koch that you know of have  
 7 any conversations with anyone at Sylvest regarding  
 8 whether they intended it to become fixtures?  
 9 A I am not aware of anybody.  
 10 Q So then the basis of that statement is  
 11 solely the -- in placement of the equipment at the  
 12 time?  
 13 MR. GEEKIE: Objection, foundation. The  
 14 complaint speaks for itself.  
 15 A Yes.  
 16 BY MR. HARRIS:  
 17 Q Who installed the equipment, if you know?  
 18 A I don't know.  
 19 Q Do you know when it was installed?  
 20 A Prior to our closing on the purchase of  
 21 Sylvest.  
 22 Q Okay. So it was not installed by -- none  
 23 of it was installed by Koch?  
 24 A Not to my knowledge.

Page 69

1 Q And when did Koch take possession of the  
 2 facility?  
 3 A The end of May 2006.  
 4 Q Now, did you see the deboning line prior  
 5 to its removal?  
 6 A Yes.  
 7 Q And have you seen the spiral freezer?  
 8 A Yes.  
 9 Q And are the attachments for both of those  
 10 items customary in the industry?  
 11 MR. GEEKIE: Objection, foundation.  
 12 A Yes.  
 13 BY MR. HARRIS:  
 14 Q Would it be typical to attach equipment  
 15 like this in the manner in which it was attached  
 16 even if it were leased equipment?  
 17 MR. GEEKIE: Same objection.  
 18 A Yes, the equipment has to be attached.  
 19 BY MR. HARRIS:  
 20 Q Whether it's leased or not, correct?  
 21 A Yes.  
 22 Q Has Koch Foods ever itself leased  
 23 equipment?  
 24 A Yes.

18 (Pages 66 to 69)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 66

1 A No.  
 2 Q Where?  
 3 A Albertville, I believe.  
 4 Q Was any damage caused to the plant by its  
 5 removal?  
 6 A Yes.  
 7 Q Tell me about that.  
 8 A The equipment is moored to the floor with  
 9 bolts. The flooring -- or those bolts would have  
 10 had to have been removed, the floor repaired.  
 11 Q Well, was it?  
 12 A Yes.  
 13 Q Okay. Because, I mean, this has occurred,  
 14 right? It has been removed?  
 15 A Yes.  
 16 Q Okay. So the mooring was damaged -- I'm  
 17 sorry, the mooring was removed and the floor was  
 18 damaged?  
 19 A Correct.  
 20 Q And how was the floor damaged?  
 21 A The bolts are secured to the floor, so  
 22 holes are made in the floor to hold the bolts.  
 23 Those bolts are then removed, and the floor needs to  
 24 be returned to a solid surface without the hole.

Page 67

1 Q And has that been done?  
 2 A Yes.  
 3 Q And how much did that cost?  
 4 A I don't know the specific dollar amount.  
 5 Q Who would know that?  
 6 A Wayne Jones.  
 7 Q And was it repaired by the same entity  
 8 that removed the deboning line or do you know?  
 9 A It was repaired by the same entity that  
 10 removed the deboning line.  
 11 Q Were any walls removed?  
 12 A No.  
 13 Q What is the basis for the statement there  
 14 that Sylvest intended for the equipment to become  
 15 fixtures?  
 16 MR. GEEKIE: Are you referring to  
 17 paragraph 17?  
 18 MR. HARRIS: I am.  
 19 A They affixed it to the facility.  
 20 BY MR. HARRIS:  
 21 Q Did you have any conversations with anyone  
 22 at Sylvest regarding whether they intended it to  
 23 become fixtures?  
 24 A My visual observation was that it was, not

Page 68

1 my conversation with Sylvest.  
 2 Q Understood. My question is did you  
 3 have --  
 4 A No.  
 5 Q -- any conversations -- okay.  
 6 Did anyone at Koch that you know of have  
 7 any conversations with anyone at Sylvest regarding  
 8 whether they intended it to become fixtures?  
 9 A I am not aware of anybody.  
 10 Q So then the basis of that statement is  
 11 solely the -- in placement of the equipment at the  
 12 time?  
 13 MR. GEEKIE: Objection, foundation. The  
 14 complaint speaks for itself.  
 15 A Yes.  
 16 BY MR. HARRIS:  
 17 Q Who installed the equipment, if you know?  
 18 A I don't know.  
 19 Q Do you know when it was installed?  
 20 A Prior to our closing on the purchase of  
 21 Sylvest.  
 22 Q Okay. So it was not installed by -- none  
 23 of it was installed by Koch?  
 24 A Not to my knowledge.

Page 69

1 Q And when did Koch take possession of the  
 2 facility?  
 3 A The end of May 2006.  
 4 Q Now, did you see the deboning line prior  
 5 to its removal?  
 6 A Yes.  
 7 Q And have you seen the spiral freezer?  
 8 A Yes.  
 9 Q And are the attachments for both of those  
 10 items customary in the industry?  
 11 MR. GEEKIE: Objection, foundation.  
 12 A Yes.  
 13 BY MR. HARRIS:  
 14 Q Would it be typical to attach equipment  
 15 like this in the manner in which it was attached  
 16 even if it were leased equipment?  
 17 MR. GEEKIE: Same objection.  
 18 A Yes, the equipment has to be attached.  
 19 BY MR. HARRIS:  
 20 Q Whether it's leased or not, correct?  
 21 A Yes.  
 22 Q Has Koch Foods ever itself leased  
 23 equipment?  
 24 A Yes.

18 (Pages 66 to 69)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524

(800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 82

1 A Yes.  
 2 Q And do you know whose handwriting that is?  
 3 A No.  
 4 Q It's not yours?  
 5 A No.  
 6 Q Here's my question. Some of it says keep,  
 7 some of it says send back. If you could take a look  
 8 at this, we were talking before, you had said that  
 9 there are various parts of the deboning line, some  
 10 of which you used and some of which you did not use.  
 11 And my question is this. If you could look through  
 12 this, where it says keep, are those the items that  
 13 were in fact used, and when it says send back, are  
 14 those in fact the items that were not used?  
 15 A I don't know.  
 16 Q Who would know?  
 17 A Wayne Jones. There are I'm sure other  
 18 folks, probably Gary Davis would know.  
 19 Q Okay. Those two folks would know what was  
 20 used and what was not used?  
 21 A Correct.  
 22 Q But you don't?  
 23 A No.  
 24 Q During the summer of 2006, how many

Page 83

1 chickens per day were processed through the deboning  
 2 line, roughly?  
 3 MR. GEEKIE: Could you read that question  
 4 back, please?  
 5 (Question read.)  
 6 MR. GEEKIE: Objection, form, vague and  
 7 ambiguous. Tim, do you want an average there  
 8 or do you want an approximation or do you want  
 9 him to tell you day by day during the summer?  
 10 MR. HARRIS: Roughly.  
 11 A Ideally we would have been attempting to  
 12 debone 674,000, but we were not. That would have  
 13 been the maximum --  
 14 BY MR. HARRIS:  
 15 Q Let me just stop you, 674,000 a day?  
 16 A No, per week, sorry.  
 17 Q Per week, okay. Now, is this seasonal or  
 18 is it the same goal irrespective of the month?  
 19 A Same goal.  
 20 Q Okay. And what is that goal of 674,000  
 21 chickens per week based on?  
 22 A That's the number of big bird chickens  
 23 that were slaughtered at the Sylvest facility at the  
 24 kill plant.

Page 84

1 Q Okay. And so the goal is to process all  
 2 the ones that are slaughtered at the kill plant?  
 3 A In a simplistic view of the production and  
 4 then what you would do with it, yes.  
 5 Q Was that goal met?  
 6 A No.  
 7 Q And why not?  
 8 A The entire facility was not staffed.  
 9 Sylvest had not fully staffed the facility prior to  
 10 us taking over.  
 11 Q Okay. So not enough employees?  
 12 A Correct.  
 13 Q And how many in fact did get processed per  
 14 week roughly?  
 15 A I wouldn't, wouldn't be able to -- I'd be  
 16 guessing.  
 17 Q Was it half, at least half of that?  
 18 A Again, I don't know.  
 19 Q You don't know?  
 20 A I don't know the specific statistics. Our  
 21 goal was to get them all deboned, and that did take  
 22 place over a period of time.  
 23 Q Did there come a time when you got staff  
 24 up to snuff and you did start hitting that goal?

Page 85

1 A Yes.  
 2 Q And when was that?  
 3 A Probably into 2007. That's how long it  
 4 took.  
 5 Q And when, early, January, February?  
 6 A January, February, that's probably  
 7 accurate.  
 8 Q So by January or February of 2007, that  
 9 deboning equipment was processing approximately  
 10 674,000 chickens per week?  
 11 A Yes.  
 12 Q Now, we talked about the goal is to keep  
 13 up with the number of chickens being killed,  
 14 correct?  
 15 A Yes.  
 16 Q And when that was not occurring during the  
 17 summer, what was the result, were fewer chickens  
 18 then killed, did you tell the kill farm to stop --  
 19 or the kill plant I should say to stop killing so  
 20 many or did you send them to somewhere else to be  
 21 processed or a combination or what?  
 22 A We would have sent them somewhere else.  
 23 We would not have slowed down the slaughter  
 24 facility.

22 (Pages 82 to 85)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 86

1 Q Okay. And where did you send them?  
 2 A Forest, Mississippi.  
 3 Q Okay. Other plants --  
 4 A Other Koch facilities.  
 5 Q Okay. So you had to ship them across the  
 6 state, correct?  
 7 A Yes.  
 8 Q What prompted Koch to stop using the  
 9 deboning equipment?  
 10 A We had attempted to come to a reasonable  
 11 conclusion to our conflict with GE. As part of that  
 12 we did some due diligence on the equipment and  
 13 determined that we could replace the equipment for  
 14 substantially less money than the gross value that  
 15 was placed on it. That also was part of our thought  
 16 process in terms of our renewed or revised offer of  
 17 value to settle this matter.  
 18 Q And by that you're referring to the 300  
 19 and some thousand?  
 20 A Yes.  
 21 Q It's been replaced. My question is with  
 22 what, the deboning line --  
 23 A With a deboning line.  
 24 Q With another deboning line?

Page 87

1 A Yes.  
 2 Q How is that different if at all from the  
 3 deboning line that was in place?  
 4 A In concept it's probably not dissimilar at  
 5 all. They're fairly simple pieces of equipment.  
 6 There are probably some nuances that are different,  
 7 but essentially it's the same.  
 8 Q Same manufacturer?  
 9 A I don't know if D & F manufactured the new  
 10 line or not. They very well could have, yes.  
 11 Q And how much did the new equipment cost  
 12 just to purchase it, I'm not talking about install,  
 13 just to purchase the actual equipment and have it  
 14 delivered on site, how much did that cost?  
 15 A I only know of one number, and I can't be  
 16 clear whether it was the purchase or the  
 17 installation or the total.  
 18 Q All right. What was the number?  
 19 A 450,000.  
 20 Q Who would know that total?  
 21 A Wayne Jones.  
 22 Q And this was purchased, and it's now owned  
 23 by Koch?  
 24 A Yes.

Page 88

1 Q It wasn't leased?  
 2 A No.  
 3 Q Was it financed?  
 4 A No. We wrote a check.  
 5 Q Okay. So there's no security agreement  
 6 covering it?  
 7 A Well, we're subject to a blanket security  
 8 agreement.  
 9 Q Okay.  
 10 A It's part of our debt deal.  
 11 Q Okay. But with respect to the  
 12 manufacturer, there's no lien held by the  
 13 manufacturer?  
 14 A No.  
 15 Q Is it less equipment than that which was  
 16 taken out?  
 17 A Yes.  
 18 Q So then not all of the lines of the GE  
 19 leased equipment were replaced, correct?  
 20 A Correct.  
 21 Q Only the ones that you deemed you needed?  
 22 A Correct.  
 23 Q And when was this new equipment purchased?  
 24 A It's been purchased January, February

Page 89

1 timeframe of '07.  
 2 Q And when was the, I'll call it the old  
 3 equipment, the deboning equipment that was being  
 4 replaced, when was that actually removed from the  
 5 plant and put out into the parking lot?  
 6 MR. GEEKIE: Objection, foundation as to  
 7 location.  
 8 A I have no idea where the old equipment is.  
 9 BY MR. HARRIS:  
 10 Q You don't know?  
 11 A No.  
 12 Q Okay. Well, let me ask you this. When  
 13 was it taken out of the plant?  
 14 A April of '07.  
 15 Q When was GE advised that it was taken out  
 16 of the plant?  
 17 A April of '07.  
 18 MR. GEEKIE: Objection, foundation.  
 19 BY MR. HARRIS:  
 20 Q By whom was GE advised of this?  
 21 A Gene Geekie.  
 22 Q So you believe that Gene Geekie advised GE  
 23 in April of '07 that the equipment, the deboning  
 24 equipment that was being replaced, was being removed

23 (Pages 86 to 89)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6



Mark Kaminsky

October 19, 2007

Page 90

1 from the plant?  
 2 A Yes.  
 3 Q Is the new stuff, the new deboning  
 4 equipment, is it better than the old equipment or  
 5 about the same?  
 6 MR. GEEKIE: Objection, vague and  
 7 ambiguous --  
 8 BY MR. HARRIS:  
 9 Q Worse?  
 10 MR. GEEKIE: -- foundation.  
 11 A It is specifically designed for how we  
 12 would set the line up. So from our perspective it's  
 13 better.  
 14 MR. HARRIS: All right. Now's a good time  
 15 for lunch.  
 16 (Lunch recess taken from 12:00 p.m. to  
 17 1:00 p.m.)  
 18 BY MR. HARRIS:  
 19 Q Mr. Kaminsky, I will remind you that you  
 20 are still under oath. Understood?  
 21 A Yes.  
 22 Q I just want to clear up a few things from  
 23 this morning's session. It's the position of Koch  
 24 Foods that the deboning equipment and the spiral

Page 91

1 freezer became the property of Koch Foods at the  
 2 time of the closing of the asset purchase agreement,  
 3 correct?  
 4 MR. GEEKIE: Objection, asked and  
 5 answered.  
 6 A Yes.  
 7 BY MR. HARRIS:  
 8 Q And who owns this equipment today?  
 9 A Koch Foods.  
 10 Q Both Koch Foods today -- strike that.  
 11 The position of Koch Foods is that today  
 12 Koch Foods still owns the spiral freezer and still  
 13 owns the deboning equipment, correct?  
 14 A Yes.  
 15 Q And the basis of your statement is because  
 16 you believe it to have been a fixture, correct?  
 17 A Yes.  
 18 Q And that would include also the deboning  
 19 equipment even though it's no longer a fixture, is  
 20 that correct?  
 21 MR. GEEKIE: Objection, calls for a legal  
 22 conclusion.  
 23 A We still own the deboning equipment, yes.  
 24

Page 92

1 BY MR. HARRIS:  
 2 Q Well, why do you still -- strike that.  
 3 Is the deboning equipment currently a  
 4 fixture of the building?  
 5 MR. GEEKIE: Objection. Objection, calls  
 6 for a legal conclusion.  
 7 A From my way of looking at it, once it's a  
 8 fixture, it's always a fixture. So yes, I would say  
 9 we still own it.  
 10 BY MR. HARRIS:  
 11 Q And the basis is because it used to be a  
 12 fixture --  
 13 A Correct.  
 14 Q -- or still is?  
 15 A Correct.  
 16 Q Does Koch Foods have an in-house counsel?  
 17 A No.  
 18 Q No attorneys are employed by Koch Foods?  
 19 A No.  
 20 Q Other than outside counsel, correct?  
 21 A That is correct.  
 22 Q Have you ever discussed with any outside  
 23 counsel your belief that the equipment was a fixture  
 24 at the time that Koch Foods took over possession of

Page 93

1 the facility?  
 2 MR. GEEKIE: I'm sorry, could you read  
 3 that back, please?  
 4 (Question read.)  
 5 MR. GEEKIE: Objection, that calls for  
 6 privileged communications, and I'll instruct  
 7 you not to answer.  
 8 MR. HARRIS: Just to be clear, what I'm  
 9 asking is not what was said but whether  
 10 discussions were had.  
 11 MR. GEEKIE: Same objection. I'll  
 12 instruct you not to answer.  
 13 BY MR. HARRIS:  
 14 Q And are you going to follow that advice?  
 15 A I am.  
 16 Q Let me ask you this. Have you ever asked  
 17 anyone whether that other person believes this to be  
 18 a fixture?  
 19 MR. GEEKIE: Objection, instruct you not  
 20 to answer to the extent that question calls for  
 21 attorney-client communication.  
 22 A Can't answer.  
 23 BY MR. HARRIS:  
 24 Q Does Koch Foods desire that GE Capital

24 (Pages 90 to 93)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 94

1 remove the deboning equipment from the facility now?  
 2 A If it's a resolution to our conflict, then  
 3 yes.

4 Q I'm not sure what that means, so let's  
 5 break that down. You mean as part of a settlement  
 6 you might be agreeable to that, is that what you  
 7 mean?

8 A Yes.

9 Q Fine. Understood. Barring settlement, is  
 10 it Koch Foods' desire that GE Capital remove the  
 11 deboning equipment now?

12 A Not at this time.

13 Q And why is that?

14 A I think we have to come to some conclusion  
 15 to our conflict.

16 Q So your position is that the deboning  
 17 equipment, while sitting outside in the parking lot,  
 18 continues to be owned by Koch Foods, is that  
 19 correct?

20 A Yes.

21 Q Now, didn't you tell me this morning that  
 22 there came a time when Koch Foods demanded that GE  
 23 remove the deboning equipment?

24 A Yes.

Page 95

1 Q And when was that again?

2 A April of 2007.

3 Q And what happened between April 2007 and  
 4 now with respect to that demand?

5 MR. GEEKIE: Objection, vague and  
 6 ambiguous.

7 A The conflict did not resolve itself. It's  
 8 escalated into legal proceedings, so --

9 BY MR. HARRIS:

10 Q Well, let me ask you this. Was the  
 11 conflict resolved in April 2007 when you say demand  
 12 was made on GE Capital to remove that equipment?

13 A No. They didn't pick it up.

14 Q Had they picked it up, would that have  
 15 resolved the conflict?

16 MR. GEEKIE: Objection, calls for a legal  
 17 conclusion.

18 A Hard to say. I mean, from my perspective,  
 19 if I don't have the equipment, I don't owe anything.

20 BY MR. HARRIS:

21 Q What if you used the equipment?

22 MR. GEEKIE: Objection, calls for a legal  
 23 conclusion and calls for speculation. There's  
 24 no factual basis.

Page 96

1 A My contention is my use of the equipment  
 2 is incidental.

3 BY MR. HARRIS:

4 Q Is it also Koch's position that despite  
 5 its use of the deboner, GE owes it storage fees with  
 6 respect to the deboner?

7 A Yes.

8 Q How do you square that with its claim that  
 9 it owns the equipment?

10 A That's what we're trying to determine, who  
 11 owns it, why, or what is owed by whom to who.

12 Q Well, if Koch Foods owns the deboner  
 13 equipment, what is the basis for your belief that GE  
 14 owes storage fees?

15 A Ultimately that's what we're going to  
 16 determine, who owns the equipment. It is my opinion  
 17 that it is owned by me. If a legal decision is made  
 18 that I do not, then I'm entitled to storage fees.

19 Q Understood. So let's be clear. It's not  
 20 just your opinion, but it's the position of Koch  
 21 Foods that it owns the deboning equipment, correct?

22 A It is.

23 Q Now, it's really not true that Koch Foods  
 24 wanted GE to remove the equipment, and when I say --

Page 97

1 strike that.

2 It's really not true, is it, that GE  
 3 Capital -- strike that.

4 It's really not true that Koch Foods  
 5 wanted GE Capital to remove the deboning equipment  
 6 back in, say, May 2006, correct?

7 MR. GEEKIE: Objection. It's  
 8 argumentative and calls -- form, objection as  
 9 to form.

10 A It was not our desire to have them remove  
 11 the equipment in May of 2006.

12 BY MR. HARRIS:

13 Q And it wasn't the desire to have GE  
 14 Capital remove the deboner or the spiral freezer  
 15 equipment for any part of the year of 2006, correct?

16 MR. GEEKIE: Same objection.

17 A No, we would not have desired to have them  
 18 remove the equipment.

19 BY MR. HARRIS:

20 Q In fact, you were trying to hold GE off  
 21 from picking up the equipment until you got the new  
 22 deboning equipment installed, isn't that true?

23 A No, that is not true.

24 Q Let me introduce a document, Exhibit D.

25 (Pages 94 to 97)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524

(800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 122

1 Q Again, we're talking feet?  
 2 A Correct.  
 3 Q And what knowledge do you have of storage  
 4 costs in Montgomery, Alabama, any?  
 5 A No.  
 6 Q Did you have anyone assist you in coming  
 7 up with that number?  
 8 A It's a consensus number as to a reasonable  
 9 amount to be charged as storage.  
 10 Q Did you have anyone assist you in coming  
 11 up with that number?  
 12 A Yes.  
 13 Q And who is that?  
 14 A Collectively as a group, myself and the  
 15 attorneys discussed that number and came up with it.  
 16 Q Anyone besides yourself and the attorneys?  
 17 A No.  
 18 Q And you yourself have no knowledge of  
 19 storage costs in Montgomery, is that correct?  
 20 A That is correct.  
 21 Q And is Koch Foods seeking this amount for  
 22 even the period in which it was using the deboning  
 23 equipment?  
 24 A Yes.

Page 123

1 Q Exhibit H, I used it before, I think  
 2 you've still got it. If not, let me know.  
 3 A Yes.  
 4 MR. GEEKIE: Wait until I get mine.  
 5 THE WITNESS: Is it -- since we're not  
 6 getting into H, I'd like to just run to the  
 7 restroom real quick, if that's --  
 8 MR. HARRIS: Sure. That's fine.  
 9 (Recess taken.)  
 10 BY MR. HARRIS:  
 11 Q You're still under oath, you understand  
 12 that?  
 13 A Yes, I understand that.  
 14 Q We were on Exhibit H, Interrogatory No. 1.  
 15 If you could please review, it's on the bottom of  
 16 page three, if you could please review the  
 17 interrogatory and the answer.  
 18 A Okay.  
 19 Q Okay. It states here that the equipment  
 20 is permanently installed in the facility. Now, you  
 21 don't mean the Ossid equipment, you mean the other  
 22 two items, correct?  
 23 A Yes.  
 24 Q And this was filed on August 9th, 2007,

Page 124

1 correct?  
 2 A Yes.  
 3 Q And you verified these answers, correct?  
 4 A Yes.  
 5 Q It says here that the equipment is  
 6 impossible to remove without dismantling the  
 7 facility. My question is was the facility ever  
 8 dismantled?  
 9 A Specifically in terms of which equipment?  
 10 Q No, no, the facility, was the facility  
 11 dismantled?  
 12 A No.  
 13 Q Has any of the equipment been removed?  
 14 A Yes.  
 15 Q And that would be the deboner, correct?  
 16 A Correct, although may I specify --  
 17 Q As you wish.  
 18 A -- in terms of the facility the floors  
 19 would have to have been altered to get the equipment  
 20 out.  
 21 Q Is there any equipment in the facility  
 22 that isn't a fixture by your definition?  
 23 A Referring to the deboning equipment and  
 24 the spiral freezer?

Page 125

1 Q No, I'm referring to that facility and all  
 2 the equipment --  
 3 A Yes, there would be equipment in there  
 4 that would not be fixtures.  
 5 Q And what would those be?  
 6 A Forklifts, tables that are not bolted  
 7 down.  
 8 Q So is it your understanding and is it the  
 9 position of Koch Foods that once something gets  
 10 bolted down it becomes a fixture?  
 11 A Yes.  
 12 Q And does it ever become not a fixture once  
 13 it's become a fixture by that definition?  
 14 MR. GEEKIE: Objection, calls for a legal  
 15 conclusion.  
 16 A I'm not sure if it could once be a fixture  
 17 and then not.  
 18 BY MR. HARRIS:  
 19 Q That's my question.  
 20 A Yes, I'm not sure.  
 21 Q You don't know.  
 22 A Don't know.  
 23 Q But the facility has not to date been  
 24 dismantled, correct?

32 (Pages 122 to 125)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524

(800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

Mark Kaminsky

October 19, 2007

Page 134

1 experiencing tremendous cash flow problems due to a  
2 large devaluation in the poultry market exasperated  
3 by fears of bird flu. The export market collapsed.  
4 So they were under a lot of distress.

5 Q And Koch Foods had bought assets out of  
6 bankruptcy before in the Rogers matter, correct?

7 A That's correct.

8 Q And, in fact, in that bankruptcy got into  
9 disputes with lessors very similar to this one that  
10 we're here on today, correct?

11 A Yes.

12 Q And how were those resolved?

13 A Various -- I mean, in the case of BC  
14 Rogers we were talking, oh, numerous, very many  
15 leases, and each one came to different conclusions.

16 Q Okay. And these were for equipment  
17 leases?

18 A Not all of them.

19 Q Some of them, though?

20 A Yes.

21 Q So that's my question. At the time that  
22 Sylvest came to Koch in early 2006, Koch had already  
23 had experience in purchasing assets out of a  
24 bankruptcy, correct?

Page 135

1 A Yes.

2 Q And, in fact, in that bankruptcy were  
3 included equipment leases, correct?

4 A Yes.

5 Q And Koch had had experience then in  
6 resolving the issues arising out of those leases,  
7 correct?

8 A Yes.

9 Q Based on that did -- strike that. I'll  
10 start over.

11 Did there come a time when Koch Foods  
12 asked Sylvest for a list of its assets?

13 A Yes.

14 Q And did it receive that list?

15 A We received a listing of assets. How  
16 accurate or -- we made requests and we did receive  
17 responses.

18 Q Were the GE leases listed?

19 A As an asset?

20 Q Yes.

21 A I don't recall if they had those pieces  
22 that were under their GE lease listed or not. I  
23 just don't recall.

24 Q Did Sylvest ever claim that it owned the

Page 136

1 equipment?

2 A I don't recall them making that claim.

3 Q In fact, didn't they disclose to you that  
4 they were leasing the equipment from GE?

5 A I don't recall them making any claims. I  
6 mean, they -- as part of the due diligence, if there  
7 was a capital lease on the books, that would have  
8 been part of the balance sheet.

9 Q And it was part of the balance sheet,  
10 right?

11 A Yes. Yes, it was.

12 Q And they disclosed that the GE leases were  
13 capital leases, correct?

14 A They made probably no representations.  
15 They gave us the balance sheet, and on its face it  
16 was clear that they had debt, they had debt owed to  
17 GE or to capital leases.

18 Q Including GE?

19 A Yes.

20 Q Wouldn't that indicate to you that these  
21 weren't fixtures owned by Sylvest?

22 MR. GEEKIE: Objection, calls for a legal  
23 conclusion.

24 A On its very face, no.

Page 137

1 BY MR. HARRIS:

2 Q Why not?

3 MR. GEEKIE: Same objection.

4 A I've had matters in the past where leases  
5 were indeed fixtures.

6 BY MR. HARRIS:

7 Q Tell me about those.

8 A Lots of this poultry processing equipment  
9 literally becomes part and parcel to the facility.

10 Q So is it Koch's testimony, because you're  
11 here in part as a 30(b)(6) witness, as a  
12 representative of Koch Foods is it your testimony  
13 that a lender can spend a million dollars on  
14 equipment, lease it to a poultry company, and as  
15 soon as that poultry company puts a bolt in the  
16 floor it becomes the property of the poultry  
17 company?

18 A That's not what I said.

19 Q Why not? What part of that is wrong?

20 A It's very simple from my perspective.  
21 Again, I'm not an attorney.

22 Q Go ahead.

23 A In order for somebody not to be subjected  
24 to the equipment being deemed a fixture when a third

35 (Pages 134 to 137)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524

(800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6



Mark Kaminsky

October 19, 2007

Page 142

1 Sylvest, inclusive of the real property and the  
 2 equipment used to operate the business.  
 3 Q Okay. But if the equipment piece that you  
 4 were purchasing was not a fixture, say it was a  
 5 forklift, you would have that separately itemized  
 6 and conveyed, right?  
 7 A That's what I would expect to see.  
 8 Q Right. Let me show you what's been marked  
 9 as Exhibit O and ask if you've ever seen this  
 10 document before?  
 11 A Yes.  
 12 Q Do you recognize whose handwriting that  
 13 is?  
 14 A No.  
 15 Q Is it yours?  
 16 A No.  
 17 Q What is this document?  
 18 A Schedule 1.3, executory contracts and  
 19 insurance policies.  
 20 Q Schedule 1.3 to what?  
 21 A On its face I, I mean, I'd be speculating.  
 22 Q You don't know, is that what you're  
 23 saying?  
 24 A I would say it's part of the asset

Page 143

1 purchase agreement, but it doesn't say on the face,  
 2 so...  
 3 Q Okay. Now, do you see No. 6 listed, it  
 4 says master lease agreement undated between GE  
 5 Capital and Sylvest Farms, do you see that?  
 6 A Yes.  
 7 Q Next to it is written reject. Was this  
 8 lease rejected in the Sylvest bankruptcy?  
 9 A Yes.  
 10 Q Did Koch Foods have any impact into that  
 11 decision?  
 12 A Yes.  
 13 Q And what would that be, what impact was  
 14 that?  
 15 A My understanding of our involvement is as  
 16 the purchaser out of bankruptcy we have the right to  
 17 either accept or reject executory contracts.  
 18 Q So the rejection was made by Koch or by  
 19 Sylvest?  
 20 A I'm not sure how it works from a legal  
 21 perspective. All I know is that Sylvest in and of  
 22 themselves would not do anything that doesn't  
 23 behoove them. I mean, whether it's Koch or Sylvest,  
 24 I just don't know. I know we have input on whether

Page 144

1 these are accepted or rejected.  
 2 Q And did you yourself personally have any  
 3 input into those decisions?  
 4 A Yes.  
 5 Q And what was the extent of that input?  
 6 A Reviewed the executory contracts and chose  
 7 to either accept them or reject them.  
 8 Q So you personally did that?  
 9 A Along with others, yes.  
 10 Q Okay. Did you personally have any such  
 11 impact with respect to No. 6?  
 12 A Yes.  
 13 Q Okay. So there came some time when you  
 14 reviewed the master lease between GE --  
 15 A Or certainly knew that there was a lease  
 16 between Sylvest and GE, and we chose to reject it.  
 17 Q Well, okay. Koch Foods chose to reject  
 18 it. Do you agree with that choice?  
 19 A Yes.  
 20 Q And why is that?  
 21 A Felt it was a overvalued, overmarket lease  
 22 that Koch did not want to be tied to.  
 23 Q Okay. Other than the inquiry from Michael  
 24 Leonard, have you received any inquiries in the

Page 145

1 purchase of the spiral freezer?  
 2 A No.  
 3 Q Has anyone else at Koch that you know of?  
 4 A No.  
 5 Q I show you Exhibit T and ask if you  
 6 recognize that document?  
 7 A No.  
 8 Q Did you create this?  
 9 A No, I did not.  
 10 Q You don't recall ever seeing this before?  
 11 A I may have at one time. I don't recall  
 12 seeing this, though, no.  
 13 Q Fine. Now, I see overall results, it says  
 14 sales, let's just go to June '06 because that is  
 15 listed under the first month of Sylvest. I'm not  
 16 going to ask you if that number is exactly right,  
 17 but is it accurate to say that Koch Foods on a  
 18 consolidated basis had about a hundred million  
 19 dollars in sales in the month of June '06?  
 20 A Yes.  
 21 Q So it has sales per year of over a billion  
 22 dollars?  
 23 A That is correct.  
 24 Q Okay. And is that -- strike that.

37 (Pages 142 to 145)

MERRILL LEGAL SOLUTIONS

Tel: (312) 263-3524 (800) 868-0061

c2df77b2-2f34-4fa8-b280-8970fc664af6

# Exhibit B

Deposition of David Bromley

November 27, 2007

<p style="text-align: right;">Page 38</p> <p>1 Q. The conveyor belts that were never used, when 2 were they first moved into the yard? 3 A. At the same time the other equipment was taken 4 out, I believe. It showed up on site, and it 5 sat out in front of the plant. And eventually 6 we moved it to the back with all the rest of the 7 equipment. 8 Q. I'm a little unclear. This stuff arrived when? 9 A. Probably early 2006, January, something like 10 that. 11 Q. And at that point there were certain conveyor 12 belts of the deboning line that were not 13 installed and never have been, correct? 14 A. That's correct. 15 Q. For a time did they sit inside the facility in 16 line? 17 A. No, sir. 18 Q. Did they sit in crates? 19 A. They weren't -- never were in crates. 20 Q. So they came and they were just kind of shoved 21 off to the side? 22 A. We took them -- unloaded them off the truck 23 to --</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Bolted to the floor. Anchored to the floor. 2 Q. Was it done in the same manner that the 3 previously removed equipment -- 4 A. Yes. 5 Q. So there was a bolt that was bolted through the 6 epoxy floor into the concrete floor underneath, 7 correct? 8 A. That's correct. 9 Q. And the installed deboning equipment was 10 installed in the same fashion as the previously 11 removed ConAgra equipment had been installed, 12 correct? 13 A. That's correct. 14 Q. Has the spiral freezer ever been used by 15 Sylvest? 16 A. No. It was never completed. The installation 17 was never completed. 18 Q. Has the spiral freezer ever been used by Koch 19 Foods? 20 A. No, sir. 21 Q. When you say it wasn't completed -- the 22 installation was not completed, in what way was 23 it not completed?</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Put them inside? 2 A. -- be installed later. 3 No. We left them outside. We unloaded them 4 and left them right outside where we unloaded 5 them. 6 Q. I see. 7 And they never went inside the building? 8 A. No. 9 Q. The other portion of the deboning equipment that 10 was installed, tell me how that was installed. 11 A. Of course, we had to remove everything that was 12 in there, but then -- and got the floor done and 13 then just bringing everything in and fastening 14 it down. You had to line it all up, bolt it 15 together. Everything ties together like a 16 freeway system. All the product falls on the 17 conveyors. 18 Q. So -- 19 A. So as these other conveyors were put in, all the 20 pans had to be welded to it. Everything was all 21 tied together. 22 Q. And how was the machinery, in fact, fastened to 23 the facility?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Mike Leonard's part was complete. He put the 2 machine in. The refrigeration was never tied to 3 it and the electrical was never finished. 4 Q. And why is that? 5 A. Bankruptcy. 6 Q. When you say bankruptcy, you mean the bankruptcy 7 filed by Sylvest? 8 A. By Sylvest, yes. That's correct. 9 Q. Were you involved in any way in the negotiation 10 of the sale of the D &amp; F equipment to Sylvest? 11 Strike that. 12 Were you involved in negotiating the price? 13 A. Yes. 14 Q. And you did this with Lenny -- 15 A. Lenny Ferguson. 16 Q. Were you involved in the documentation regarding 17 that lease? 18 A. I didn't have anything to do with it being 19 leased, no, if that's what you're asking. 20 Q. Thank you. That was a bad question. 21 You purchased it from D &amp; F, but it was done 22 in the form of a lease from GE Capital. Is that 23 your understanding?</p>

Deposition of David Bromley

November 27, 2007

Page 42	Page 44
<p>1 A. That's correct.</p> <p>2 Q. Were you involved in the documentation of the</p> <p>3 lease from GE Capital to Sylvest?</p> <p>4 A. No. I had nothing to do with the GE Capital</p> <p>5 side.</p> <p>6 Q. Have you ever seen the lease?</p> <p>7 A. No, sir.</p> <p>8 Q. Were you ever asked to review the lease?</p> <p>9 A. No.</p> <p>10 Q. Now, when did Sylvest -- did Sylvest ever use</p> <p>11 any part of the deboning line?</p> <p>12 A. Yes.</p> <p>13 Q. When did it first begin using it?</p> <p>14 A. Around the end of -- I don't remember the exact</p> <p>15 date, but the end of 2005, beginning of 2006.</p> <p>16 Q. And when I say use it, I mean they started</p> <p>17 deboning chickens.</p> <p>18 A. That's correct.</p> <p>19 Q. How long did they use it -- did Sylvest use it?</p> <p>20 A. Until the sale to Koch.</p> <p>21 Q. And when was that?</p> <p>22 A. I believe it was May or June 2006.</p> <p>23 Q. At that time you and certain other Sylvest</p>	<p>1 A. No.</p> <p>2 Q. How long did Koch Foods use the deboning</p> <p>3 equipment?</p> <p>4 A. I'm trying to think of when we took it out. I</p> <p>5 would guess it was probably about nine months.</p> <p>6 Q. And when was it removed?</p> <p>7 A. About four months ago, something like that.</p> <p>8 Three or four months ago.</p> <p>9 Q. So early summer of 2007?</p> <p>10 A. I would say that's right.</p> <p>11 Q. Was it continuously used by Koch Foods from the</p> <p>12 time that Koch Foods took over from Sylvest in</p> <p>13 the late spring or early summer of 2006 until</p> <p>14 the time that it was removed nine or ten months</p> <p>15 later?</p> <p>16 A. Yes.</p> <p>17 Q. Was any rent paid by Koch Foods to GE for that</p> <p>18 equipment? Do you know?</p> <p>19 A. I do not know.</p> <p>20 Q. I want to talk to you about the decision to</p> <p>21 remove the equipment, not the actual removal --</p> <p>22 we'll get to that -- but the decision to remove</p> <p>23 it. When did you first learn that Koch Foods</p>
Page 43	Page 45
<p>1 employees were hired by Koch; is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. And did there ever come a time during that</p> <p>4 transition from Sylvest to Koch where the</p> <p>5 deboning line portion that was being used was</p> <p>6 not being used?</p> <p>7 A. No. It was pretty much seamless. We just kept</p> <p>8 going.</p> <p>9 Q. So you never missed a day or anything?</p> <p>10 A. No.</p> <p>11 Q. You just kept doing it every day and the</p> <p>12 ownership changed, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Are you aware of any demands by Koch Foods that</p> <p>15 GE Capital remove the deboning equipment?</p> <p>16 A. No.</p> <p>17 Q. Did you make any?</p> <p>18 A. No.</p> <p>19 Q. Have you ever talked to anybody from GE Capital?</p> <p>20 A. No.</p> <p>21 Q. Are you aware of any demands by Koch Foods that</p> <p>22 GE Capital pay it rent for either the spiral</p> <p>23 freezer or the deboning equipment?</p>	<p>1 was thinking about removing the equipment?</p> <p>2 A. Probably about three weeks before it actually</p> <p>3 happened.</p> <p>4 Q. And how did you learn?</p> <p>5 A. I was told that it was going to happen and to go</p> <p>6 ahead and set up the contractors to put</p> <p>7 everything together to get that change done.</p> <p>8 Q. And from whom did you learn this?</p> <p>9 A. I believe it was Gary Davis, who was the complex</p> <p>10 manager at that time.</p> <p>11 Q. And he's now been replaced by ...</p> <p>12 A. David Massey.</p> <p>13 Q. Were you involved in the decision to do that or</p> <p>14 were you just instructed --</p> <p>15 A. No, sir. No, sir.</p> <p>16 Q. You weren't involved in the decision?</p> <p>17 A. No.</p> <p>18 Q. Did you ask Mr. Davis why you were being asked</p> <p>19 to make the change?</p> <p>20 A. No, sir.</p> <p>21 Q. Did you talk to anybody else besides Mr. Davis</p> <p>22 about the decision to make the change?</p> <p>23 A. No.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. Was the deboning equipment performing adequately</p> <p>2 prior to its deinstallation?</p> <p>3 A. Yes.</p> <p>4 MR. GEEKIE: Objection. Vague and</p> <p>5 ambiguous.</p> <p>6 A. Yes.</p> <p>7 Q. Did you have any complaints about it?</p> <p>8 A. No.</p> <p>9 Q. How many people are employed at that facility</p> <p>10 approximately? A hundred?</p> <p>11 A. Currently or back then?</p> <p>12 Q. Currently.</p> <p>13 A. Probably about 600.</p> <p>14 Q. How about back at the time of the transition</p> <p>15 from Sylvest to Koch?</p> <p>16 A. Probably about 250, 300.</p> <p>17 Q. So it's doubled in size approximately?</p> <p>18 A. Uh-huh (positive response).</p> <p>19 Q. That's a yes?</p> <p>20 A. Yes.</p> <p>21 Q. I'm sorry.</p> <p>22 A. I'm sorry. Yes.</p> <p>23 Q. That's fine.</p>	<p style="text-align: right;">Page 48</p> <p>1 want you to shut down and remove all this</p> <p>2 equipment, right?</p> <p>3 A. Well, we don't shut down. We do it all on the</p> <p>4 weekend. On several weekends, yes. We came in,</p> <p>5 and it took a couple of weekends to get that all</p> <p>6 done.</p> <p>7 Q. So this did not interrupt the processing of the</p> <p>8 deboning line?</p> <p>9 A. No.</p> <p>10 Q. On a normal schedule, like right now, no weekend</p> <p>11 shifts are worked; is that correct?</p> <p>12 A. No.</p> <p>13 Q. So they are closed during the weekend?</p> <p>14 A. Yes.</p> <p>15 Q. So then for the three or four weeks then leading</p> <p>16 up to the removal, you would shut down portions</p> <p>17 at a time and remove it and replace it with new</p> <p>18 stuff or just take out the old stuff? How did</p> <p>19 that work?</p> <p>20 A. The -- It actually took two weeks, and the first</p> <p>21 week we removed all the equipment we could do</p> <p>22 without. There's some equipment that wasn't</p> <p>23 running that never did run, and we got all that</p>
<p style="text-align: right;">Page 47</p> <p>1 Tell me about the deinstallation process,</p> <p>2 then. About three weeks before you actually</p> <p>3 removed the equipment, Mr. Davis told you to</p> <p>4 prepare to do that. What did you do after he</p> <p>5 told you to prepare to do that?</p> <p>6 A. Contacted electricians, you know, plumbers and</p> <p>7 millwrights. Of course, the millwrights had</p> <p>8 already been determined. The same people who</p> <p>9 sold the equipment were the millwrights. They</p> <p>10 would come in and actually move the equipment.</p> <p>11 Q. Who is that?</p> <p>12 A. Fabco, F-A-B-C-O.</p> <p>13 Q. Who were the electricians?</p> <p>14 A. I believe I used G T Key.</p> <p>15 Q. Plumbers?</p> <p>16 A. Peterson Industrial.</p> <p>17 Q. Anyone else you needed?</p> <p>18 A. I believe that was it.</p> <p>19 Q. And so you contacted all of these folks, and you</p> <p>20 chose a date, right, a specific date?</p> <p>21 A. I think I was given a date. I don't remember</p> <p>22 what that was.</p> <p>23 Q. But Mr. Davis said on such-and-such a date, I</p>	<p style="text-align: right;">Page 49</p> <p>1 out of the way. And then the second weekend we</p> <p>2 came in and did a whole scale tear-out. Took</p> <p>3 everything out and replaced everything.</p> <p>4 Q. So no shifts were missed?</p> <p>5 A. No.</p> <p>6 Q. Correct?</p> <p>7 A. I don't think so.</p> <p>8 Q. Tell me about the removal process. How was this</p> <p>9 removed?</p> <p>10 A. Came in and unhooked all the electrical and all</p> <p>11 the water and air.</p> <p>12 Q. When you say air, was that for the pressure?</p> <p>13 A. We use air for -- There were air cylinders and</p> <p>14 air gates that directed product as it went</p> <p>15 through the process. We went in and</p> <p>16 disconnected all of that, and then they would</p> <p>17 come in and unbolt it from the floor. A lot of</p> <p>18 the equipment had to be cut apart. As I said</p> <p>19 before, it was all welded together to make one</p> <p>20 big integral operation.</p> <p>21 Q. And these are -- the various pieces that came</p> <p>22 from the factory were then welded together?</p> <p>23 A. That's correct.</p>